

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

Dated 20th March, 2006

Petition No.127(C) of 2005

Kavali Cable Vision
8-12-1E,
Cinema Hall Road,
Kavali – 524201

Through:

Shri M. Venugopal Reddy,
President

... Petitioner

Versus

1. Channel Plus - AP
A Unit of Gemini Pvt. Ltd.
Door No.367 & 369,
Anna Salai,
Teynapet,
Chennai – 600 018

2. Sun Network,
Anna Arivalayam
Thalam Pet,
Chennai

3. Akash Cable PV (P) Pvt.
Through P. Siva Kumar Reddy,
Manager Director,
Saraswathi Nagar,
Dargamitta, Nellore,
Andhra Pradesh Respondents

BEFORE:

**HON'BLE MR. JUSTICE N. SANTOSH HEGDE
CHAIRPERSON**

MR. VINOD VAISH, MEMBER

LT. GEN. D.P. SEHGAL, MEMBER

For Petitioner : Mr. G. Prabhakar and
Mr. K. Subba Rao, Advocates

For Respondent No.2 : Mr. Yogesh Gupta Advocates

For Applicant in M.A. No.7 : Mr. Amit Sharma, Advocate
of 2006 (Respondent No.3)

ORDER

This Petition was filed under Section 14-A of the Telecom Regulatory Authority of India (TRAI) Act. The Petitioner has sought for a direction to the 1st Respondent herein to issue decoders and Sim Cards for receiving 1st Respondent's signals of GEMINI and TEJA and for onward transmission to the subscribers. The Petitioner has contended that it is an association of cable operators which was originally consisting of 12 cable operators of Kavali Town. It is stated that Kavali Town has subscriber base of 12,000 and it is being catered by the 12 cable operators. In 1997, out of 12 cable operators 8 of them separated from the original association and formed their own group. It is further stated that in the year 2002 the 1st Respondent/Broadcaster interrupted supply of its GEMINI and TEJA channels and the distribution right of these channels was granted to one distributor called Kavali Entertainment Network from whom members of the Petitioner Association were receiving signals as cable operators. It is further stated that the 8 members of the Petitioner Association together supply signals to about 10,000/- subscribers in the Kavali Town and these members of the Petitioner Association together pay a subscription of Rs.90,000/- per month to Kavali Entertainment Network. It is further alleged that in the month of November, 2003, KEN sought to increase the subscriber base of the members of the Petitioner Association unilaterally to 10,000/- and demanded a sum of Rs.1 lac per month from the members of the Petitioner Association. When the Petitioner agreed to pay this subscription on 20th March, 2004, the said KEN refused to accept the said sum of Rs.1 lac and wanted an increase at the subscriber base of 50,000 subscribers. The Petitioner Association and its members refused to heed to this demand of KEN. The signals of GEMINI and TEJA channels were disconnected on 29th March, 2004. It is stated that when the

Petitioner started negotiating with the said KEN the said distributor started demanding a monthly subscription from the members of the Petitioner Association of Rs.3,59,350/-. The members of Petitioner did not agree to this demand. It is further stated that above mentioned KEN entered into a Memorandum of Understanding with the 3rd Respondent herein (CAN) to become latter's distributor for supply of TEJA and GEMINI which is being transmitted from a place called Nellore which is about 60 kms. from Kavali Town. Therefore, the quality of signals received at Kavali Town of TEJA and GEMINI channels was not good and the subscribers who were receiving signals started complaining about the same. It is in these circumstances, the Petitioner on behalf of its members has approached this Tribunal for the redressal of their grievances by seeking direct signals from the broadcaster.

2. The 1st Respondent/Broadcaster has contended that the contention of the Petitioner that the quality of signals was not good is incorrect. It is also stated that Petitioners were receiving signals of TEJA and GEMINI channels originally from KEN who later affiliated itself to the 3rd Respondent and the signals are now being distributed in Kavali Town through these two media. It is also contended that it is not a feasible proposition to give direct signals to the 8 cable operators who are represented in this Petition since Kavali Town has a limited subscriber base.

3. Respondent No.3 who is impleaded in this Petition at its behest has contended that it is the sole distributor for GEMINI and TEJA channels in the area concerned and in Kavali Town, it has been supplying signals of these two channels through its intermediary i.e. KEN and the allegations that the quality of signals is not good is wholly incorrect. It is contended that though the distance between Nellore from where the 3rd Respondent operates and Kavali Town is about 60 kms., the 3rd Respondent has made elaborate arrangements to transmit signals through optical fiber which it has laid under the railway track at a huge cost and signals which are carried by the optical fiber are of the same quality as any other good signal. It is also submitted that it has its own maintenance facility at Kavali Town. Therefore, the allegation of the Petitioners that its members are not receiving good signals is not only imaginary but also with ulterior motive. It is also pointed out that under the

Interconnection Regulations, it is open to a broadcaster to supply signals through an agent or an intermediary as long as the same is done in a reasonable manner. Therefore, there is no cause of action for the Petitioner or its members to approach this Tribunal.

4. Having heard the learned counsel for the parties and having perused the records, we notice that out of a total subscriber base of about 15,000/- in the Kavali Town, the members of the Petitioner Association are catering to nearly 12,000 subscribers, whereas the other cable operators are catering to the balance only. It is in this background that the Petitioner is seeking to receive the signals of TEJA and GEMINI channels from the 1st Respondent directly so that it can cater to its subscribers without going through an intermediary. The Petitioner has made allegations in regard to unreasonable demand that has been made on its members by KEN and threat of disconnection as well as the quality of signals received by it which, of course, have been vehemently denied by the contesting Respondent. Be that as it may, we think that since Kavali town has a subscriber base of nearly 12,000 and prior to the third Respondent's coming into the picture the broadcaster/1st Respondent was supplying signals through a cable operator in the town of Kavali. It will be unreasonable to compel the Petitioners to receive signals from an MSO who is situated nearly 60 kms. away from Kavali town. Reasonableness being a requirement of the relationship between a signal provider and signal receiver as per the Interconnection Regulation, we think the 1st Respondent should make an alternative arrangement to cater to the need of the Petitioners since the Petitioners are catering to nearly 80% of the subscribers in the town of Kavali by treating them as an MSO. Since the Petitioners have already registered as cable operators, there is no prohibition in law to treat this group as a single MSO for the purpose of providing signals to the Petitioners. By this the Petitioners can supply the signals of the 1st Respondent/Broadcaster to its consumers without having to add the share of profit of an intermediary. By this even the Respondent No.1 will not stand to lose anything. Of course, the expenses of the Decoder and the Sim Card will have to be borne by the Petitioners and subscription would be paid directly to the broadcaster, which will be ultimately to the benefit of the end-user. So, on this ground, the Petitioners are entitled to the relief sought for by them. However, we make it clear that since Petitioners are claiming the signals as one

entity and that entity is not registered, all the members of the Petitioner group will have to execute a collective agreement with the 1st Respondent if they desire signals directly.

5. We have considered the argument of the learned counsel for the 3rd Respondent that the Petitioner Association is not a registered body hence cannot maintain this petition. We do not think that there is any prohibition in law for a group of persons forming an entity and entering into an agreement with the broadcaster to receive latter's signals provided they are registered as cable operators/MSO. As a matter of fact, this practice was prevailing till the time 3rd Respondent came into picture. Therefore, this objection of the 3rd Respondent has to be rejected.

6. For the reasons stated above, this Petition is allowed. The 1st Respondent is directed to provide the Petitioner Association with a decoder and necessary Sim Card to facilitate the members of the Petitioner Association to transmit signals of TEJA and GEMINI channels of the 1st Respondent to its signals directly, for which the Petitioner is directed to pay a subscription on an agreed fee on a subscriber base of 12,000/- which the Petitioner has agreed to pay before this Tribunal.

7. Ordered accordingly.

.....J
(N. Santosh Hegde)
Chairperson

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(Vinod Vaish)
Member

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(D.P. Sehgal)
Member